

UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27

NATIONAL DIGITAL TELEVISION CENTER, INC.,<sup>1</sup>

and

Employer  
Case 27-RC-7939

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,<sup>2</sup>

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will

effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> name of the Petitioner appears as amended at the hearing.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act

**INCLUDED:** All full-time and regular part-time Operations department employees, including master control operators, tape operators, quality control operators, and dubbing coordinators) employed by the Employer at its Littleton, Colorado facility;

**EXCLUDED:** all office dencal employees, guards, professional employees, and supervisors as defined In the Act, and all other employees.

The Employer, located in Littleton, Colorado, operates a broadcast facility, which provides a full complement of satellite services. The Employer's primary functions are to broadcast programs via satellite using digital technology, to develop such technology, and to sell network channels. The broadcast service is performed for numerous channels owned by clients.

The Employer consists of four major component groups. Only the Broadcast group is at issue in this matter. The other groups are Technology, Access and Controls, and HITS (marketing). The Broadcast group includes the Operations, Traffic, Post-production, and NRC departments. The Petitioner seeks to represent only the Operations department employees in the Broadcast group. The Employer, maintains that all employees of the four departments in the Broadcast group have substantial integration and common interests, and the

Employer asserts that the only appropriate unit is one comprised of all four departments of the Broadcast group.

The Board in *Overnite Transportation Company*, 322 NLRB 723 (1996), stated:

Section 9(b) of the Act provides that the Board ‘shall decide in each case whether... the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.’ The plain language of the Act clearly indicates that the same employees on an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute an appropriate employer wide unit also may constitute an appropriate unit if they are a craft unit or a plantwide unit. The statute further provides that units different from these three, or ‘subdivisions thereof,’ also may be appropriate. It is well settled then that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. (Citations omitted.)

In deciding the appropriate unit, the Board first considers the Union’s petition and whether that unit is appropriate. If a petitioner’s unit is found not to be appropriate, the Board may then consider an alternative proposal for an appropriate unit. See *Overnite Transportation Company*, *Id* at 817, citing *P.J. Dick*, 290 NLRB 150 (1988). In defining the appropriate bargaining unit, the Board’s focus is on whether the employees share a community of interest. A number of factors are important in analyzing community, including bargaining history, work contacts among the several groups of employees, extent of interchange of employees, differences in product, skills or type of work required, centralization of management and supervision, functional integration of the employer’s operation, and geographical locations. *Overnite Transportation Company*, *Id*; *Kalamazoo Paper Box*, 136 NLRB 134 (1962).

The Traffic department employees' primary responsibility is to make the schedule (the log) showing everything going to air and at what time. In addition to programs, this includes commercials and promotional material. Traffic employees are responsible for the accuracy of the log. Traffic department employees physically deliver the log to the Operations department employees. When necessary, Traffic employees and master control operators in the Operations department consult with each other to ensure the accuracy of the logs.

The Network Response Center (NRC) department is responsible for monitoring the signal transmission from a satellite to an earth station for over 400 networks. Each employee watches 50-70 stations on any given shift to ensure quality. The employee, upon noticing a signal problem, notifies the various personnel, including the Operations department supervisor. When the problem concerns a channel that originates with the Employer, several phone calls between employees of the NRC and Operations departments may take place.

Post-production department employees include: video tape editors, who synthesize video tape together; special event coordinators, who organize live events, including sporting events and perform quality control and dubbing tapes for pay per view; and close captioning editors, who provide program text.

The Operations department is responsible for ensuring that programming is aired according to a network's specifications. Operations department employees are also responsible for ensuring the accuracy of the log delivered by Traffic, loading the tapes according to the log,

and ensuring that the appearance,

sound, and sequence of programs are correct. As the program is playing, the quality control operators monitor it for signal quality. The dubbing or quality control room, where tapes are duplicated and minor editing functions are performed, is part of the Operations department.

The Operations department constitutes a separate and distinct subdivision within the overall Broadcast group. The Operations department consists of approximately 105 employees, including 11 employees working in the dubbing or quality control room. The Operations department is headed by a director and assistant director. There are seven mid level supervisors in the Operations department who report to the director and assistant director.<sup>3</sup>

The Traffic and NRC department employees report to a different director. There are 25 employees in Traffic and 23 in NRC. The 15 Post-production employees report to yet another director responsible for that department.

There exists no common supervision among the four departments of the Broadcast group. There is no shared supervisory responsibility for another department, even on an occasional basis. Common supervision exists only at the level of the company President. Employees in each department are evaluated only by their own department supervisors.

A high school diploma is required for an entry position in the NRC department. The other three departments within the Broadcast group desire a bachelor's degree, but will hire individuals with less education. Operations

~ The parties stipulated that the following are supervisors: Greg Browne, Michelle Ball, Lisa Gallagher, Dave Huss, Losa M'Olio, Rick Cline and Martin Pipho. As the record supports such a stipulation. I find they are supervisors as defined in the Act, and they are excluded from the unit found appropriate.



department employees, apparently unlike the others, require more formal training.

Hourly Operations department employees earn \$9.50 to \$17 or more per hour. The Operations department is staffed twenty-four hours a day, seven days a week in order to provide twenty-four hours of television programming. The day shift works 7:05 a.m. to 3:05 p.m. Swing shift works 3:05 p.m. to 11:05 p.m., and the night shift works the remaining eight hours.

Traffic department employees earn between \$10 and \$15 an hour. Traffic department employees work a Monday through Friday day shift. Other hours, depending on client needs, are occasionally worked.

NRC department employees earn between \$8.45 and \$10.55 an hour. The NRC department is staffed twenty-four hours a day, seven days a week.

Post-production department employees earn between \$10 and \$25 an hour and work primarily day shifts. Two special event coordinators in the Post-production department work a swing shift and one works nights.

Nine of the current 15 videotape employees and special event coordinators in the Post-production department transferred from the Operations department. Of the 25 Traffic employees, four transferred from the Operations department. Two NRC department employees transferred to the Operations department.

There is no interchange of employees between the four departments. Employees in the various departments are responsible for the work in their department, and they do not perform other department's work. The only

exception is that approximately 30 operators from the Operations department have performed voluntary overtime work for the Post-production department over the past several years. The amount of recent overtime worked by these operators from the Operations department for the Post-production department has been minimal. However, such overtime may substantially increase based upon the number of special sporting events that will soon be televised.

Operations department employees work in the northwest part of the building on the first floor in separate master control rooms and in the dubbing room. Until last week, Traffic employees were located on the second floor. They are now located across the hall from the Operations department. The NRC department's two rooms are in the same general area as the master control rooms occupied by the Operations department. Post-production employees are on the first floor, but in another part of the building. A number of other employees from outside the Broadcast group, all of whom the Employer agrees should not be included in the unit found to be appropriate, work in the same area or in close proximity to the Operations department.

The Employer asserts that Traffic department employees have constant and daily contact and interaction with the Operations department employees. Traffic employees do deliver the logs on a daily basis from Monday through Friday during the day shift. Discussion may take place between the employees of the two departments when the logs prove to be inaccurate or some other problem develops. This discussion would take place when the logs are physically delivered or by telephone during the day. Because the Traffic

department employees work only days, any such interaction is limited to that shift. Traffic department employees may enter information into the backup automation system while an operator from the Operations department is working on the main computer. Additionally, Traffic and Operations department employees may attend the same “core group” meetings concerning a particular client.

The delivery of the logs by Traffic employees to the Operations department normally results in minimal contact and interaction. Ordinarily, the logs are merely dropped off with an Operations department employee by a Traffic department employee. If the Operations employee is not present, the log is simply left on the counter. Only when a problem develops, is there interaction and, for the most part, that interaction is minimal. For one channel, Animal Planet, the client requires that Traffic employees enter information into the computer in the master control room. In this circumstance, while Traffic department employees and Operations department employees are in the same room, there is no interaction as they perform their different tasks. Indeed, these Operations department employees average approximately only five minutes a day shift interacting with Traffic department employees. There is no contact or interaction during the Operations department operators’ swing and night shifts as the Traffic department is not working at those times or on weekends.

“Core group” meetings that involve employees of both the Traffic and Operations departments take place only three to four times a year and only approximately six Traffic department employees attend these meetings. As

many as 20 Operations department employees attend these “core group” meetings. The Operations department holds its own quarterly staff meetings at which only Operations employees attend and participate.

Operations and NRC department employees communicate with each other during outages. Telephonic contact is made so that the employees may locate and correct a problem. If the outage is ongoing, they may communicate several times. Operations department employees testified that contact and interaction with NRC employees is even less frequent than with Traffic employees. This is so, despite the fact that the two departments work the same hours. Telephone communication between Operations and NRC employees, which is the most frequent type of contact, lasts just a matter of seconds. The frequency of contact between NRC employees and quality control employees of the Operations department normally averages just a few calls per month. Additionally, NRC employees do not attend the core group meetings attended by Operations employees.

As was the case between Operations and NRC, contact and interaction between Operations department employees and Post-production department employees is also limited in frequency and duration.

In assessing the relevant factors as they relate to community of interest, it is noted that there is some functional integration in the four departments of the Broadcast group employees. I find, however, that this integration does not destroy the separate identity and distinct function

of the Operations department. In reaching this conclusion, I rely in particular on the fact that  
Operations

department employees are in a separate subdivision with their own supervisors. Their separate identity is also established by their distinct work functions, training program, the lack of interchange among the employees, and, most importantly, the very limited contact and interaction with employees of other departments within the Broadcast group.

Because the employees in the Traffic, NRC and Post-production departments do share some community of interest with the Operations department employees, a unit comprised of employees of all four departments would be appropriate. While such a unit would be permitted based on the record established herein, it is not required. *Panhandle Telecasting Company d/b/a KFDA-TV Channel 10*, 308 NLRB 667 (1992). I further find that case authority cited by the Employer is distinguishable from the facts herein.

Unlike the facts in *J.C. Penney Co.*, 328 NLRB No. 105 (1999), there is no temporary interchange between employees of the Operations department and employees in the Traffic, NRC, and Post-production departments. Also, in *J.C. Penney*, the Board found that 100 customer service representatives in the telemarketing department sought to be excluded by the petitioner in that matter, in fact, performed duties identical to those performed by customer relations department employees in the petitioned-for unit. Those 100 employees were regularly assisted by employees in the unit found appropriate. Further, in *J.C. Penney*, 15 to 20 per cent of the calls placed for telemarketing employees were handled by customer relations employees, who were included in the unit sought. In the matter herein, the employees in the

Traffic, NRC, and Post-production



departments perform duties that are distinguishable from those performed by the Operations department, and there is insubstantial assistance provided by employees in the different departments.

Nothing in the Act requires that the unit found appropriate be the only appropriate unit, or even the most appropriate unit. *Overnite Transportation Company, Inc.; Brand Precision Services*, 313 NLRB 6657 (1994). The Act requires only that the unit be an appropriate unit. Based upon the above, and the record as a whole, I find that the Operations department employees comprise a distinct, separate, and cohesive grouping of employees, and, as such, are an appropriate unit for collective bargaining purposes.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.<sup>4</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before

the election date

Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Boards Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and time objections are filed. Please see the attachment regarding the posting of election notice.

and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United- States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

## COMMUNICATION WORKERS OF AMERICA, AFL-CIO

### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to

the election. In order to be timely filed,

such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before July 30, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by August 9, 1999. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 23rd day of July, 1999.

Wayne L. Benson, Acting Regional Director  
National Labor Relations Board, Region 27  
600 Seventeenth Street  
700 North Tower, Dominion Plaza  
Denver, Colorado 80202-5433

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7/23/ 99

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## Section 103.20 Posting of Election Notices.

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least three (3) full working days prior to 12:01 am. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least five (5) working days prior to the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under provisions of Section 102.69(a).

Dated, Washington, D.C., June 30, 1987, by direction of the Board.

National Labor Relations Board  
John J. Toner, Executive Secretary

ATTACH M ENT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATIONAL DIGITAL TELEVISION CENTER

Employer,

and

Petitioner.

Case 27-RC-  
7939

COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL NO. 7777,

Date of Mailing:

ELECTION  
July 23, 1999

AFFIDAVIT OF SERVICE OF DECISION AND DIRECTION OF

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

National Digital  
Television Center, Inc.  
Attention: Tracy Cajaro  
4100 E. Dry Creek Road  
Littleton, CO 80112

Henry E. Farber, Esq.  
Davis, Wright & Tremaine,  
L.L.P.

2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  
(Employer's Counsel)

Communications Workers of

America, Local No. 7777  
Attention: Kevin Hilton,  
Organizer

2840 South Vallejo  
Englewood, CO 80110  
Communications Workers of  
America, Local No. 7777  
Attention: John W.  
McKendree, Esq.

Creswell Mansion  
1244 Grant Street  
Denver, CO 80203  
(Union's Counsel)

Subscribed and sworn to before me this **DESIGNATED AGENT**

**23** day of July, **1999**

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**23~** day of July, **1999.**

**NATIONAL LABOR RELATIONS BOARD**